

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVIS/HUNT/DAVIS-HUNT,
Minors.

UNPUBLISHED

June 26, 2014

No. 317598

Wayne Circuit Court

Family Division

LC No. 01-398887-NA

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g), (i), (j), and (l). We affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998). The trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews parental termination decisions for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

On appeal, respondent argues that the termination order should be reversed because reasonable reunification efforts were not made and termination was not in the children's best interests. We disagree.

I. FACTUAL BACKGROUND

Respondent has a lengthy history with Children's Protective Services (CPS). In 2004, respondent's two older children entered foster care because of allegations that their father was a child sexual abuser and respondent had failed to protect them. Respondent was given a treatment plan in 2005 to reunify her with the children. Services included parenting classes, a clinical evaluation, individual therapy, family therapy, and supervised parenting time. Nonetheless, her parental rights to the two older children were terminated in 2009 because she failed to comply

with and benefit from the court-ordered treatment plan. This Court affirmed the trial court's order of termination. *In re Brown, Minors*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2009 (Docket No. 290768).

Respondent's four younger children are at issue in this appeal. Two of these children were born while the earlier case was pending in the trial court, and respondent hid them from CPS. When petitioner learned of their existence in 2009, an original petition was filed to terminate respondent's parental rights to three of the children.¹ Respondent admitted that her parental rights to two older children had been terminated and that she had failed to comply with the court-ordered treatment plan in that case. Respondent was given an opportunity to comply with a second treatment plan, and the three children were returned to her custody.

However, in 2012, respondent's medical neglect of her then three-year-old son DH, who had been diagnosed with a bilateral detached retina and mature cataracts, and the educational neglect of her then 11-year-old daughter AD, along with her previous protective services history, came to petitioner's attention, and a petition requesting termination of respondent's parental rights to the four children at issue here was filed. The petition alleged that respondent had failed to bring DH to medical appointments and follow through with necessary treatment to address his critical eye condition. As a result, he was legally blind. Her daughter, AD, the oldest of these four children, was habitually absent from school.

II. STATUTORY GROUNDS

On appeal, respondent does not challenge the trial court's conclusion that there were sufficient grounds to terminate her parental rights. Nonetheless, a review of the trial court's statutory findings gives context to issues of reasonable reunification efforts and the best-interest determination that are properly before this Court.

The trial court did not clearly err in finding that MCL 712A.19b(3)(g), (i), (j), and (l) were established by clear and convincing evidence. These statutory grounds allow for termination of parental rights where:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

¹ The youngest child here, KD-H, was born while the present case was pending in the trial court and in 2012 his name was included in the termination petition.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

The trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). Respondent failed to provide proper care and custody of DH and AD, along with the other two children under the well-recognized doctrine of anticipatory neglect. *In re LaFlure*, 48 Mich App 377; 210 NW2d 482 (1973). In 2009, the court terminated respondent's parental rights to two older children after concluding that respondent was unable to provide proper custody and that the children would be harmed if they were returned to her care. The record shows that respondent remains unable or unwilling to properly care for these four children.

Respondent was aware of DH's vision issues following a routine eye examination by Dr. Giles in October 2010. DH had "lazy eye" and was prescribed eyeglasses. Respondent was directed to return in six weeks. She missed two follow-up appointments scheduled in December 2010 and February 2011. Respondent returned DH to the eye doctor in March 2011. Respondent had not obtained the eyeglasses prescribed for DH four months earlier. Dr. Giles told respondent to get the glasses, without which DH was legally blind.

In October 2011, Dr. Giles again examined DH and noted that cataracts were beginning to develop and that his lazy eye condition had not improved. Respondent was told to meet with an orthoptist. Respondent missed two orthoptist appointments in December 2011 and April 2012. Dr. Giles examined DH again on September 20, 2012. Dr. Giles advised respondent that DH needed to be examined under anesthesia. Dr. Giles explained the urgency and importance of the treatment and scheduled a follow-up appointment for the following Wednesday. Respondent missed that appointment saying that she had to work. The appointment was rescheduled for November 30, 2012.

Based on the ultrasound performed under anesthesia on November 30, 2012, DH had nearly mature cataracts, bilateral retinal detachments, and inflammation in the eyes. The retinal detachment likely caused eye inflammation and had led to the development of cataracts, which were detected in October 2011. On December 5, 2012, Dr. Giles explained to respondent that retinal detachments without early intervention could cause permanent blindness and advised her to have DH seen by a retinal specialist within 24 hours. CPS intervened after respondent missed an appointment on December 6, 2012, at Beaumont Retinal Consultants.

Respondent minimized the seriousness of DH's medical condition and resisted CPS's attempts to get him the critical medical treatment. A maternal aunt took DH to Beaumont for eye surgery on December 11, 2012. Following the surgery to address DH's retinal detachment, his vision remained very limited because the mature cataracts had yet to be removed. It was

unknown whether DH would be permanently blind. Clearly, respondent understood the serious nature of her son's eye condition yet failed to provide him with readily available medical treatment. There was substantial evidence that her actions and poor judgment posed a serious risk to DH's well-being. Respondent's inaction and complete disregard contributed to DH losing some of his eyesight.

There was also ample evidence that respondent ignored the educational needs of AD who had 19 unexcused absences from school and had missed her first-hour class 32 times between September and December 2012. AD reported that she had missed school because she had to take care of her three younger siblings. Moreover, the children were alone when the home was burglarized late at night in August 2012. When two armed gunmen attempted to enter the bedroom where the three younger children were sleeping, it was AD, not respondent, who provided safety and protection by blocking the door with a television.

Respondent had been provided with a myriad of services since 2004 under two court-ordered treatment plans yet her behavior remained unchanged for more than a decade. Thus, it was highly likely that she would be unable to provide proper care and custody of the children within a reasonable time considering their ages. The trial court soundly concluded that respondent's conduct would expose the children to a likelihood of harm if they were returned to her care.

The proofs similarly support the trial court's termination of respondent's parental rights pursuant to MCL 712A.19b(3)(i) and (l). Respondent's two oldest children became temporary court wards in 2005 because of respondent's neglect. Respondent did not believe or discounted credible sexual abuse allegations and took no action to protect her children. Respondent's parental rights were terminated after a child protective proceeding because she did not participate in or benefit from reunification services to remedy serious and chronic neglect. Surely, prior rehabilitation efforts were unsuccessful in light of respondent's neglect of AD's educational needs and her extreme medical neglect of DH.

III. REASONABLE REUNIFICATION EFFORTS

Respondent claims on appeal that petitioner did not make reasonable efforts to reunify the family. Respondent asserts that she was ready, willing, and able to engage herself in a treatment plan. This claim is meritless in law and fact.

Generally, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7); see also MCL 712A.19b(5). However, petitioner is not required to make reasonable efforts if aggravated circumstances are present. Reasonable efforts are unnecessary where respondent's parental rights to the child's siblings were involuntarily terminated. MCL 712A.19a(2)(a), (c). This case was initiated and properly preceded under an original petition for permanent custody. The proofs supported the allegations of aggravated circumstances and a prior involuntary parental rights termination of respondent's rights to two siblings. Thus, petitioner was not required to make reasonable family reunification efforts. Further, reunification effort would have been fruitless given the plethora of evidence that respondent was offered years of services yet she remained highly deceptive and lacked any insight into her chronic and deep-rooted neglectful behavior.

IV. BEST INTERESTS OF THE CHILDREN

The trial court did not err in concluding that it was in the children's best interests to terminate respondent's parental rights. On appeal, respondent's scant offer of proof was that she "loved her children and was very much bonded with them." She offers no specific evidence to support her argument that termination was not in the children's best interests. Thus, her claim of error is not properly before this Court. *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001); *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).

Nonetheless, the record also establishes that termination of respondent's parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5); accord MCR 3.977(H)(3). The evidence showed that respondent was self-focused and unable to put her children's needs above her own. The caseworker testified that she repeatedly told respondent that DH could not see. Respondent insisted that his vision was fine in direct contrast to his known medical condition and sight limitations. At trial, she even showed a complete lack of insight into the circumstances that led to termination of her parental rights to her two older children. Respondent testified that the child sexual abuse allegations were lies. Respondent also claimed that AD was either lying or coerced to say that she missed school because she had to care for her younger siblings. The record, as noted by the lower court, is rife with respondent's excuses, rationalizations, and finger pointing at others.

Further, respondent appeared to have an inadequate bond with her children. DH was covered under Medicaid, yet respondent ignored his medical appointments because she was "not going to mess up her money, or whatever." The caseworkers observed that respondent was unable to fully focus her attention on the children during supervised parenting time. The children would be excited to see her but would return to play without any further attempt to interact with her. They sought comfort from each other rather than respondent. AD behaved as the pseudo-parent of her younger siblings. The Clinic for Child Study evaluator opined that any parental-child bond was outweighed by respondent's negative and harmful behavior.

Respondent argues that the trial court did not consider the best interests of each child individually, as required by *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012), and did not consider AD's placement with a relative as an alternative to terminating respondent's parental rights. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* at 43, citing *In re Mason*, 486 Mich 142, 163-165; 782 NW2d 747 (2010), and *In re Mays*, 490 Mich 993, 994; 807 NW2d 304 (2012). These arguments are groundless.

After the best-interest hearing concluded, the trial court noted that AD would have a different placement plan than her siblings. AD would be available for adoption because the court was terminating respondent's and the unknown father's parental rights. The placement plan for her three siblings was to be returned to their father if he successfully completed his treatment

plan. The trial court specifically stated on the record for these three children, individually, that each needed a permanent plan for adoption if their father did not maintain his parental rights.

Moreover, the trial court trial made an explicit best-interest finding, in light of AD's placement with her maternal grandfather at the time of the termination hearing. While placement with relatives may weigh against termination, a trial court is not required to leave a child with relatives in lieu of terminating an unfit parent's rights. *In re Mason*, 486 Mich at 164 (2010). The trial court properly acknowledged and considered AD's placement with a relative, specifically stating that, because she did not have a legal father, she was available for adoption, her grandfather wanted to adopt her, and permanency was in her best interests.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood